

House Bill 1146

By: Representatives Meadows of the 5th, Smith of the 131st, Dickson of the 6th, Williams of the 4th, Maxwell of the 17th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the imposition, rate, and computation of income tax, so as to provide for income tax credits with respect to qualified donations to community foundations; to provide for definitions; to provide for conditions, limitations, and exclusions; to provide for authority of the state revenue commissioner with respect to the foregoing; to provide an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the imposition, rate, and computation of income tax, is amended by adding a new Code section immediately following Code Section 48-7-29.9, to be designated Code Section 48-7-29.10, to read as follows:

"48-7-29.10.

(a) As used in this Code section, the term 'community foundation' means an organization that applies for certification on or before May 15 of the tax year for which the taxpayer is claiming the credit and that the department certifies for that tax year as meeting all of the following requirements:

(1) Qualifies for exemption from federal income taxation under Section 501(c)(3) of the Internal Revenue Code;

(2) Supports a broad range of charitable activities within the specific geographic area of this state that it serves, such as a municipality or county;

(3) Maintains an ongoing program to attract new endowment funds by seeking gifts and bequests from a wide range of potential donors in the community or area served;

(4) Is publicly supported as defined by the regulations of the United States Department of Treasury, 26 C.F.R. 1.170A-9(e)(10). To maintain certification, the community

1 foundation shall submit documentation to the department annually that demonstrates
2 compliance with this subdivision;

3 (5) Is not a supporting organization as an organization is described in Section 509(a)(3)
4 of the Internal Revenue Code and the regulations of the United States Department of
5 Treasury, 26 C.F.R. 1.509(a)-4 and 1.509(a)-5;

6 (6) Meets the requirements for treatment as a single entity contained in the regulations
7 of the United States Department of Treasury, 26 C.F.R. 1.170A-9(e)(11);

8 (7) Except as provided in subsection (e) of this Code section, is incorporated or
9 established as a trust at least six months before the beginning of the tax year for which
10 the credit under this Code section is claimed and that has an endowment value of at least
11 \$100,000.00 before the expiration of 18 months after the community foundation is
12 incorporated or established;

13 (8) Has an independent governing body representing the general public's interest and that
14 is not appointed by a single outside entity;

15 (9) Provides evidence to the department that the community foundation has, before the
16 expiration of six months after the community foundation is incorporated or established,
17 and maintains continually during the tax year for which the credit under this Code section
18 is claimed, at least one part-time or full-time employee;

19 (10) For community foundations that have an endowment value of \$1 million or more
20 only, the community foundation is subject to an annual independent financial audit and
21 provides copies of that audit to the department not more than three months after the
22 completion of the audit. For community foundations that have an endowment value of
23 less than \$1 million, the community foundation is subject to an annual review and an
24 audit every third year; and

25 (11) For a community foundation that is incorporated or established after January 1,
26 2007, operates in a county of this state that was not served by a community foundation
27 when the community foundation was incorporated or established or operates as a
28 geographic component of an existing certified community foundation.

29 (b) A taxpayer may credit against the tax imposed by this chapter 50 percent of the amount
30 the taxpayer contributes during the tax year to an endowment fund of a community
31 foundation; or a taxpayer may credit against the tax imposed by this chapter 50 percent of
32 the cash amount the taxpayer contributes during the tax year to a shelter for homeless
33 persons, food kitchen, food bank, or other entity located in this state, the primary purpose
34 of which is to provide overnight accommodation, food, or meals to persons who are
35 indigent if a contribution to that entity is tax deductible for the donor under the Internal
36 Revenue Code.

(c) For a taxpayer other than a resident estate or trust, the credit allowed by this subsection for a contribution to a community foundation shall not exceed \$100.00, or \$200.00 for a husband and wife filing a joint return. A taxpayer may claim an additional credit under this subsection not to exceed \$100.00, or \$200.00 for a husband and wife filing a joint return, for total cash contributions made in the tax year to shelters for homeless persons, food kitchens, food banks, and, except for community foundations, other entities allowed under subsection (a) of this Code section. For a resident estate or trust, the credit allowed by this subsection for a contribution to a community foundation shall not exceed 10 percent of the taxpayer's tax liability for the tax year before claiming any credits allowed by this Code section or \$5,000.00, whichever is less. A resident estate or trust may claim an additional credit under this subsection not to exceed 10 percent of the taxpayer's tax liability for the tax year before claiming any credits allowed by this Code section or \$5,000.00, whichever is less, for total cash contributions made in the tax year to shelters for homeless persons, food kitchens, food banks, and, except for community foundations, other entities allowed under subsection (a) of this Code section. For a resident estate or trust, the amount used to calculate the credits under this subsection shall not have been deducted in arriving at federal taxable income.

(d) An entity other than a community foundation may request that the department determine if a contribution to that entity qualifies for the credit under this Code section. The department shall make a determination and respond to a request no later than 30 days after the department receives the request.

(e) A taxpayer may claim a credit under this Code section for contributions to a community foundation made before the expiration of the 18-month period after a community foundation was incorporated or established during which the community foundation must build an endowment value of \$100,000.00 as provided in paragraph (7) of subsection (a) of this Code section. If the community foundation does not reach the required \$100,000.00 endowment value during that 18-month period, contributions to the community foundation made after the date on which the 18-month period expires shall not be used to calculate a credit under this Code section. At any time after the expiration of the 18-month period under paragraph (7) of subsection (a) of this Code section that the community foundation has an endowment value of \$100,000.00, the community foundation may apply to the department for certification under this Code section.

(f) In no event shall the total amount of any tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

1 (g) The commissioner shall promulgate any rules and regulations necessary to implement
2 and administer this Code section."

3 **SECTION 2.**

4 This Act shall become effective January 1, 2007, and shall be applicable to all taxable years
5 beginning on or after January 1, 2007.

6 **SECTION 3.**

7 All laws and parts of laws in conflict with this Act are repealed.